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LABOUR STANDARDS IN A GLOBALISED ECONOMY SYMPOSIUM

The ILO, its standards and their supervision: difficult times?

CLAIRE LA HOVARY — 4 November, 2015

The International Labour Organisation's (ILO) mandate to pursue social justice through the improvement of the conditions of workers worldwide is clearly as relevant now as it was when the Organisation was founded in 1919. Deficient working conditions are still creating immense human suffering, generating injustice and threatening stability. Amongst the initiatives taken to assist it in its mandate, the ILO has produced an impressive number of conventions, protocols and recommendations (these constitute international labour standards, or 'ILS') as well as some important declarations. The ILO has also developed a

complex supervisory mechanism to monitor the application in law and in practice of ILS, as well as respond to complaints. The Organisation has, more generally, demonstrated significant capacity for innovations over its almost 100 years of existence as well as achieved important successes. At the same time, these have been hampered by major difficulties, both external and internal to the ILO. In particular, the Organisation is facing very serious challenges in terms of the dynamics and operationalisation of its unique tripartite structure.

Tripartism in the ILO

Tripartism is of central importance to the ILO. It implies the active involvement not only of governmental representatives from the ILO's 185 member states, but also representatives of Employer and Workers' organisations from each of these states. In particular, tripartism is central in the shaping of ILS, not only in relation to the choice of the topic of these standards (which is decided by the tripartite Governing Body of the ILO), their elaboration and their adoption (by the annual tripartite International labour Conference – ILC), but also with regards to their supervision. Indeed, many aspects of the ILO's supervisory mechanisms are tripartite in nature, or have involved tripartite decision making. This is particularly the case of the Committee of Experts on the application of Conventions and Recommendations (CEACR), to which independent legal experts are appointed by the tripartite ILO Governing Body, the tripartite Committee on the Application of Standards (CAS) of the ILC, and the tripartite Committee on Freedom of Association (CFA), which is made up of representatives nominated by each group, with all members approved by the Governing Body. The current difficult operationalisation of tripartism is

therefore having an impact on the ILO in general, but more specifically on ILS and the ILO's supervision system; it is therefore not something that international lawyers, and especially defenders of workers' rights, should ignore.

Generally, Employers and many Governments in the ILO hold the opinion that (overly) regulating working conditions has adverse effects on economic growth. However, before the fall of the Berlin Wall, they supported the adoption of ILS partly because of their fear of communism. This changed after the end of the Cold War, and, *inter alia*, Employers in the tripartite CAS started to voice their disapproval regarding the independent CEACR 'expanding' ILS through its interpretations. This disapproval, which crystallised around the issue of the right to strike, initially remained very much within the CAS, and did not visibly affect its proceedings or those of other supervisory bodies. This long-standing disagreement escalated in a spectacular way during the June 2012 ILC when the Employers' actions put a stop to the proceedings of the CAS – something which had never happened before.

The 2012 ILC Crisis and its Impact

Employers not only rejected the important role that the CEACR has had in providing clarifications to ILS and the "inherent" – in the words of the CEACR and the CFA – nature of the right to strike to freedom of association, but also paralysed the work of the CAS and braked the precarious trust between Employers and Workers. The crisis is not yet resolved, but these developments arguably signal major changes in the practice of tripartism within the ILO as well as, unavoidably, broader changes in the Organisation, including a transformation in the way of doing business

within the ILO, where the Employers are now setting the terms. The post-Cold War indifference or resistance of Employers towards ILS has developed into an additional opposition against the ILO supervisory bodies which, until now, they had not attacked in such a frontal manner.

Several explanations can be put forward for the changing power play between Workers and Employers in the ILO. One of them is that Employers have clearly increasingly felt that they have a free hand to push for a deregulation of international labour law and for a reform of the ILO's supervisory system in the post-Cold War period. This however is something which they feel is extremely pressing as the potential for ILO supervisory bodies to have influence outside the ILO is changing: there are a growing number of initiatives taken outside the ILO as well as judicial decisions that make reference to ILS and/or the supervisory bodies' pronouncements (e.g. various Free Trade Agreements signed with the United States or decisions of the European Court of Human Rights such as Demir and Baykara v Turkey). Employers are concerned that the interpretations that are given to these conventions by the ILO supervisory bodies will not remain limited to dealings within the ILO. Since there is of course no way to control whether or not interpretations given by the supervisory bodies will remain within the ILO, it essentially seems that the Employers are trying to silence them.

Very important discussions will be taking place over the next few years – these concern the so-called "standard review mechanism" (SRM), for which a tripartite working group will report to the Governing Body in November 2015, and a review of the ILO supervisory system as a whole, for which a report will be prepared by the Chairperson of the CEACR

and the Chairperson of the Committee on Freedom of Association (CFA) and discussed in the March 2016 Governing Body. These extremely broad topics deal with the heart of the ILO supervisory system and directly with ILS. While both the ILO supervisory system and ILS could undoubtedly be improved, discussing these issues in a way that makes basic principles seem negotiable could also have significantly negative consequences for ILS, especially in a context where Employers have become so dominant and no longer seek consensus.

Conclusion

The balance of power between Workers and Employers has been changing and took a dramatic turn in 2012. The crisis that occurred that year seems to have very much been internal to the ILO, touching on constitutional, institutional, and practical elements, as well as the Organisation's particular balance of power, but it is in fact clearly the reflection of a broader ideological conflict, and therefore has to be understood as such. The events that have been unfolding since 2012 could have a far-reaching impacts beyond the ILO, by not only undermining the right to strike and challenging the independence and the role of the CEACR – and therefore reducing its impact – but also by having highly negative consequences for existing ILS which could be weakened. These are important developments for anyone interested in the ILO and in its quest for social justice.

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